

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAROLD ANDRE WALTON,

Petitioner,

vs.

LARRY SMALL, Warden,

Respondent.

CASE NO. 08-CV-02131-H (POR)

ORDER:

**(1) DENYING THE
CERTIFICATE OF
APPEALABILITY**

**(2) GRANTING THE MOTION
FOR IN FORMA PAUPERIS**

On November 14, 2008, Jarold Andre Walton (“Petitioner”), a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner challenges his convictions for attempted murder, assault with a firearm, and possession of a firearm by a felon, alleging constitutionally ineffective trial and appellate counsel. (*Id.*) On February 9, 2009, Respondent filed an answer to the Petition. (Doc. No. 9.) On December 18, 2009, the magistrate judge issued a Report and Recommendation (“R&R”) that the Court deny the Petition. (Doc. No. 22.) On January 25, 2010, Petitioner filed an objection to the R&R. (Doc. No. 24.) On February 17, 2010 the Court issued an order denying the Petition and denying a certificate of appealability (“COA”). (Doc. No. 25.) On March 19, 2010, Petitioner filed a notice of appeal and an application for a COA. (Doc. Nos. 27, 32.) Petitioner also filed a motion for leave to appeal *in forma pauperis* on March 19, 2010. (Doc. No. 28.)

Discussion

A. Certificate of Appealability

A prisoner seeking a COA must demonstrate a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see also Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller-El, 537 U.S. at 327 (citing Slack v. McDaniel, 529 U.S. 473, 481 (2000)).

Petitioner has not made a substantial showing of a denial of a constitutional right in any of his claims. Accordingly, the Court DENIES a COA.

B. In Forma Pauperis

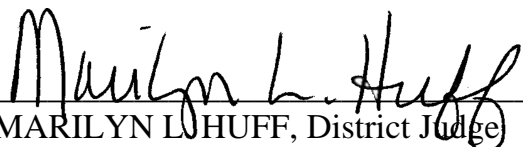
If a prisoner seeks to appeal a district court's decision *in forma pauperis*, the prisoner must appeal in good faith. See 28 U.S.C. § 1915(a)(3). In any case where the plaintiff or petitioner has been granted leave to file the action *in forma pauperis*, pauper status may continue for the appeal from a subsequent order or judgment, unless the district court certifies that the appeal is taken in bad faith or finds that the party is not otherwise entitled to continuing pauper status. See id.; Fed. R. App. P. 24(a). The Court finds no reason to revoke pauper status, and therefore, GRANTS Petitioner's motion for leave to appeal *in forma pauperis*.

Conclusion

For the reasons stated above, the Court **DENIES** a Certificate of Appealability and **GRANTS** Petitioner's Motion for Leave to Appeal in Forma Pauperis.

IT IS SO ORDERED.

DATED: April 1, 2010


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

COPIES TO:
All parties of record.